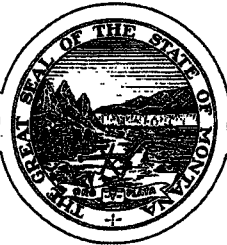


DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION  
HELENA WATER RESOURCES REGIONAL OFFICE



STATE OF MONTANA

PHONE: (406) 444-6999  
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1424 9TH AVENUE  
PO BOX 201601  
HELENA, MT 59620-1601

December 17, 2014

J.J. Connor  
472 Lower Deep Creek Rd.  
Townsend, MT 59644

Re: Irvin Family Transfer

Dear Mr. Connor:

The purpose of this letter is to respond to your request for DNRC review of water right permit exceptions under MCA 85-2-306 (iii) for the proposed DEQ review in accordance with ARM 17.36.103(1)(s). The proposed project is to split an existing 20 acre parcel into 4 individual tracts located in Section 35, T7N, R2E, Broadwater County. An individual well is proposed on tracts 1, 2 and 3, to provide water for 1 household and .5 acres of lawn and garden irrigation per tract. Amended Tract B currently has a Groundwater Certificate, 41I 117390, for 20 GPM and 8.2 AF for stock, domestic and lawn and garden purposes.

Based on the information received December 3, 2014, the proposed appropriation from each well does not fit the current rules and laws pertaining to the filing of a water right using a DNRC Form 602, Notice of Completions of Groundwater Development. The proposed appropriation is considered a combined appropriation because the proposed tracts do not appear to have been approved or recorded with Broadwater County prior to November 21, 2014. Although each proposed well can potentially pump up to 35 GPM, with the current Groundwater Certificate, the project as a whole exceeds the 10 AF volume (8.2 AF (41I 117390) + 3 households + .75 acres lawn/garden = 14.95 AF). Please note that these figures are based on DNRC water use standards (ARM 36.12.115). A water right permit must be applied for on DNRC Form 600, prior to putting the water to a beneficial use.

The Montana First Judicial District entered Judgment on November 6, 2014, in *Clark Fork Coalition et al v. DNRC et al*. Cause No. BDV-2010-874, striking the Department's Admin.R.Mont. 36.12.101 definition of "combined appropriation" under Mont. Code Ann. 85-2-306. The Court reinstated the Department's 1987 Rule defining "combined appropriation" as:

An appropriation of water from the same source aquifer by means of two or more groundwater developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater developments need not be physically connected nor have a common distribution system to be considered a "combined appropriation." They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated from the entire project or development from these groundwater developments in the same source aquifer is the "combined appropriation."

Under this Rule, the Department interprets subdivisions that are pending before the Department of Environment Quality for approval on November 21, 2014 or filed after that date to be a single project that can be accomplished by a single appropriation. Consequently all wells in such a subdivision will be considered a "combined appropriation" for the purposes of Mont. Code Ann. 85-2-306. The only exception to this interpretation is that a subdivision which has received preliminary plat approval prior to November 21, 2014 will not be considered a project under the "combined appropriation" 1987 Rule; individual lots will still be evaluated under the 1987 Rule at the time of an application to the Department.

Thank you,

A handwritten signature in black ink, appearing to read "MB Gartland", with a stylized flourish at the end.

Bryan Gartland, Deputy Regional Manager  
DNRC Water Resources Helena Regional Office

Cc: DEQ, Leata English via email

11 Diamond Gulch Rd  
Traffic, Bicycling



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